pressed in general terms, and there is no agreed terminology. As was said by Lord Wilberforce in *Secretary of State for Education and Science* v. *Tameside Metropolitan Borough Council*: [4]

"There is no universal rule as to the principles on which the exercise of a discretion may be reviewed; each statute or type of statute must be individually looked at."

Thus we must construe the Industrial Relations Act, 1967, to determine its policy and object. It cannot be gainsaid that the intention of the Act is to regulate the relations between management and labour and to prevent and settle trade disputes arising therefrom. Briefly, it provides machinery for investigating, determining and settling such disputes by arbitration, conciliation and reference to the Industrial Court, and in implementing it, policy decisions come into play. The courts call this 'discretion', meaning that the decision is one for the Minister to make, and not for the courts. It is a matter of discretion depending upon the satisfaction of the Minister with respect to the expediency of making such a reference. But if the Minister, by reason of his having misconstrued the Act or for some other reason, so exercises his discretion in a way as to defeat the policy and object of the Act, then he has clearly exercised it wrongly. In that case the courts will interfere with the exercise of his discretion by saying that he has given no weight, or has given insufficient weight, to the considerations that ought to have weighed with him, or if he has been influenced by considerations which ought not to have weighed with him.

The Minister has given his reason for refusing to refer the trade dispute to the Industrial Court and that enables us to know the considerations which had weighed with him. We have already set out the facts and circumstances which formed the basis of his decision. He stated in his affidavit that the facts and circumstances relating to the dismissal of the five union workers were different from those relating to the dismissal of Raman Che Mat. In the case of the former, they admitted gambling in the hotel premises; in the case of the latter, he denied it. In the circumstances he said the complaint of the union workers was vexatious and without merit. We can therefore see a reason to the effect that on receipt of the complaint, the Minister had satisfied himself from information in his possession as to the merits of the complaint, and he then decided that it was not expedient to refer it to the Industrial Court and it would in our opinion be a waste of time and money and contrary to the policy and object of the Act to do so. Looking at the factual basis upon which he invoked his discretionary power, we are satisfied that he had exercised it in a manner which is in accord with the intention of the Act. He is an elected Minister and is entitled to have his opinion of Industrial problems within the area of his responsibility respected. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient. "The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred." These words taken from the speech of Lord Diplock in the *Tameside* case, (*supra*, p. 695) reflect the truism that those in whom discretionary power is vested have, to a greater or lesser extent, a range of options at their disposal. As we have said earlier in this judgment, we must guard against any tendency to equate the distinct process of mere review with an unarticulated opinion that having investigated the facts we are in a better position to adjudicate upon the merits. That is not our function. It is not for us to say what shall or shall not be done in this special area of delegated jurisdiction. Our duty is only to see that the matter in hand has been determined by the Minister in accordance with the policy and object of the Act. That in our opinion he has done.

We dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.*

KEITH SELLAR v. LEE KWANG
TENNAKOON v. LEE KWANG

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya), Wan Suleiman F.J., Abdul Hamid Omar F.J. & Hashim Yeop A. Sani J.) April 21 & May 24, 1980]

[Kuala Lumpur — Federal Court Civil Appeal Nos. 219 & 232 of 1979]

Legal Profession — Disciplinary proceedings — Whether rightly taken under new law — Receipt of money by Chief Clerk in name of firm — Failure to return or account for money — Misconduct — Standard of proof — Legal Profession Act, 1966, s. 150(1).

Statute — Whether statute has retrospective effect — Effect of repeal — Interpretation Act, 1967, s. 30 — Legal Profession Act, 1966, s. 150(1).

In this case a complaint was made on or about the 19th August 1975 that the respondent had paid money to the Chief Clerk of the appellants' firm, which was not returned or accounted for. The Legal Profession Act 1966 which repealed the Advocates and Solicitors Ordinance, 1947, came into force on 1st June 1977. The Disciplinary Committee appointed by the Bar Council decided that although it was appointed before the commencement of the Legal Profession Act, 1976, it was deemed to be appointed under that Act and that proceedings should proceed as though they were commenced under the Act. The Disciplinary Committee found that the appellants were guilty of misconduct in their practice as advocates and solicitors. The appellants appealed.

Held: (1) the express provisions of section 150 of the Legal Profession Act, 1976 override section 30 of the Interpretation Act, 1967 and the Disciplinary Committee was therefore correct in proceeding under the 1976 Act;

(2) in the circumstances of this case the Disciplinary Committee adopted the right approach and there were no grounds to assume that the Committee had applied a lower standard of proof than that required for a proceeding of this nature.

Cases referred to:-

(1) *Hamilton Gell* v. *White* [1922] 2 K.B. 422, 431.

(2) *Director of Public Works* v. *Ho Po Sang* [1961] A.C. 901; [1961] 2 All E.R. 721.

(3) *Free Lanka Insurance Co. Ltd.* v. *Ranasinghe* [1964] 1 All E.R. 457.

(4) *Kenderaan Bas MARA* v. *Yew Bon Tew & Anor.* [1980] 1 M.L.J. 311.

(5) *Carson* v. *Carson* [1964] 1 W.L.R. 511, 516.

(6) *Re Athlumney* [1898] 2 Q.B. 547.

(7) *Hutchinson* v. *Jauncey* [1950] 1 K.B. 574.

(8) *Re Joseph Suche & Co. Ltd.* (1875) 1 Ch. D. 48, 50.
(9) *Au Kong Weng* v. *Bar Committee State of Pahang* [1980] 2 M.L.J. 89.
(10) *Bhandari's Case* [1956] 3 All E.R. 742.
(11) *United Africa Co. Ltd.* v. *Saka Owoade* [1957] 3 All E.R. 216.
(12) *Lloyd* v. *Grace, Smith & Co.* [1912] A.C. 716.
(13) *Colin Kenneth McCoan* v. *General Medical Council* [1964] 1 W.L.R. 1107.
(14) *Felix* v. *General Dental Council* [1960] A.C. 704, 720; [1960] 2 W.L.R. 934; [1960] 2 All E.R. 391.
(15) *Re a Solicitor* [1960] 2 Q.B. 212.
(16) *In re a Solicitor* [1956] 1 W.L.R. 1312.

[The following cases were also cited in argument:- *In Re Advocate and Solicitor* [1950] M.L.J. 113; *In the matter of a Vikil* A.I.R. 1928 Cal. 817.]

FEDERAL COURT.

R.R. Chelliah for both appellants.

B.K. Tan for the respondent.

Jagjit Singh for the Bar Council.

S. Balarajah for the Disciplinary Committee.

Cur. Adv. Vult.

Hashim Yeop A. Sani J. (delivering the judgment of the Court): The appeals are from the decision of the Disciplinary Committee appointed by the Chief Justice to investigate into a complaint made against the appellants, two senior members of the legal profession. Very briefly, the background of the matter is as follows. On or about August 19, 1975 one Lee Kwang made a complaint to the Johore Bar Committee to the effect that a sum of $49,423.30 had been paid (in cash) by him to one Charlie Chin (chief clerk of the appellants' firm) and not returned. He was issued with a receipt No. 0600 dated July 10, 1973 (Exhibit P1). The payment was said to be towards the purchase of certain lands. Since payment of the said sum it was complained that the solicitors failed to return the same and refused to advise the complainant on the progress of the purchase of the lands despite several requests by him. P1 is an official receipt of the firm issued in respect of the client's account. P1 was signed by Ramanathan (the cashier) of the appellants' firm. The Disciplinary Committee was appointed on October 30, 1975.

The new Legal Profession Act, 1976 came into force on June 1, 1977 superseding the Advocates and Solicitors Ordinance, 1947. It appears that the Disciplinary Committee decided that notwithstanding that it was appointed before the commencement of the Legal Profession Act, 1976 it was deemed to be appointed under that Act and the proceedings to proceed as though they were commenced under that Act. This view appears at the beginning of the "statement of its findings" preceding the Order. The Disciplinary Committee commenced its proceedings on January 4, 1977 and finally by its Order dated November 1, 1979 directed that both appellants be suspended from practising as advocates and solicitors for a period of twelve months from the date of the Order.

During the hearing the appellants put up a defence in the alternative. First it was their contention that since the receipt (P1) was issued by the appellants' agents and/or servants, therefore they themselves were not in breach of any rule of conduct or ethics. The other defence was that the money was never in fact paid to the chief clerk of the appellants' firm. After analysing the facts of the case from the evidence adduced before it, the Disciplinary Committee made its findings as follows: —

"The Committee feels that it cannot give credence to the act of issuing the subject receipt without the moneys acknowledged in such receipt as having been paid to someone in the Solicitors' firm."

Further it said:

"Solicitors in the course of practising their profession continually receive moneys on behalf of clients which places them in a position of trust but the very foundation of such trust would be completely destroyed if a Solicitor is able to absolve himself from liability to account for any such moneys by contending that although an official receipt was issued by him or his firm he is able to claim that no such moneys were received by him or his servants or employees and that no record of such moneys appears in his or his firm's books of account. The Committee cannot and does not accept such a contention and would be derelict in its duty if it did so."

It is clear from the above that the Disciplinary Committee has made unequivocal findings of fact. In its view the partners of the solicitors firm should have taken immediate steps to determine their liabilities and responsibilities to the complainant as their client and that both the appellants admitted it was the practice of their firm that both the chief clerk (Charlie Chin) and the cashier (Ramanathan) could receive moneys and issue valid and binding receipts on behalf of the firm. The Disciplinary Committee concluded that in so doing both the appellants were bound by the actions of the persons they so authorised. It was therefore the firm finding of the Disciplinary Committee that the appellants were guilty of misconduct in their practice as advocates and solicitors. The words used to describe one of the offences in section 93(2)(b) of the 1976 Act are:

"dishonest conduct in the discharge of his professional duty or fraudulent conduct or *conduct otherwise unbefitting an advocate and solicitor."*

In our view two issues have to be resolved in the determination of this appeal. They are —

(1) since the complaint was made before the coming into operation of the 1976 Act, whether the Disciplinary Committee was correct in regarding the complaint as a complaint under the 1976 Act and in proceeding under the 1976 Act, and not the 1947 Ordinance. In other words what is the effect of section 30 of the Interpretation Act, 1967 read with section 150(1) of the Legal Profession Act, 1976; and

(2) whether the Disciplinary Committee in this case adopted the correct burden of proof required in the proceeding before it.

As regards the first issue, the Disciplinary Committee did not give any grounds how it arrived at the view that notwithstanding that it was appointed before the commencement of the 1976 Act, it was "clear from section 150(1) of that Act" that section enabled it to carry on the proceeding as if it was appointed under that Act and not under the 1947 Ordinance.

Section 30 of the Interpretation Act, 1967 deals with matters not affected by the repeal of a written

law either in whole or in part. Relevant for consideration for the present purpose are the provisions of paragraphs (b) and (d) which provide that the repeal of a written law shall not:

"(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or

....

(d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been made."

The corresponding provisions in the U.K. Interpretation Act, 1889 are contained in section 39(c) and (e) which are substantially similar to our provisions.

Halsbury's Statutes, Volume 32, at page 459 explains the meaning of the words "Right acquired or accrued" and says that that section should not preserve "abstract rights" conferred by the repealed Act, but only applies to *specific rights* given on the happening of events specified in the statute. *Hamilton Gell* v. *White*,[1] *Director of Public Works* v. *Ho Po Sang*[2] and *Free Lanka Insurance Co., Ltd.* v. *Ranasinghe*[3] were examined in our court recently in *Kenderaan Bas MARA* v. *Yew Bon Tew & Anor.*[4] for the purpose of finding the true meaning of "acquired rights" and "accrued rights". The Chief Justice said in the judgment:

"The criteria adopted in those cases in the process of determining 'accrued right' seem to be this. It must depend on the happening of an event which is specified in the statute."

Generally however the right approach should be as pointed out in that judgment that "we must have regard to the trite maxim *omnis nova constitutio futuris forman imponere debet non praeteritis*, that unless it is so expressed in the new law, a vested right is not taken away." In *Ho Po Sang's* case it was held that a pending application for a permit, the issue of which was in the discretion of the authorities, could not proceed after the repeal of the enabling legislation. It is to be noticed however that in the U.K. Interpretation Act the words "unless the contrary intention appears" preceded the provisions referred to earlier. These words are not found in our Interpretation Act, 1967.

Section 150(1) of the Legal Profession Act, 1976 read as follows: —

"150. (1) Any applications and complaints made under sections 29, 30 and 32 of the Ordinance any proceedings before a Disciplinary Committee appointed under the Ordinance or before the court under section 33 of the Ordinance shall proceed as though the applications or complaints were made or the proceedings commenced under this Act, and for the purposes of this section any Disciplinary Committee appointed under the Ordinance shall be deemed to be a Disciplinary Committee appointed under this Act."

The express words of section 150(1) express clearly the intention of the legislature. In our view it is clear that although the Disciplinary Committee was appointed before the coming into force of the 1976 Act it shall be deemed to by a Disciplinary Committee appointed under the Act and section 150 of the Act directs that *all applications, complaints and proceedings* standing at the commencement of the 1976 Act shall be regarded as having been made or commenced under the new Act. This interpretation would seem to be strengthened by section 150(2) of the Act which says that "this Act shall apply to *all applications, complaints and proceedings*," and that in the event of any doubt or difficulty the matter should be referred to a judge for directions.

The provisions of paragraphs (b) and (d) of section 30(1) of our Interpretation Act, 1967 merely contain a restatement of the law which is said to have been "so frequently quoted with approval that it now itself enjoys almost judicial authority." (See *Carson* v. *Carson*[5]). At page 216 of *Maxwell's* Interpretation of Statutes, 12th Edition, the following appears: "Perhaps no rule of construction is more firmly established than this — that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, other than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment." (judgment of R.S. Wright J. in *Re Athlumney*[6]). "If however the language or the dominant intention of the enactment so demands, the Act must be construed so as to have a retrospective operation for the rule against retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject matter with which the statute is dealing." (*Carson* v. *Carson, supra*). Again at page 221 the learned author says, "But if the necessary intendment of a statute is to affect the rights of parties to pending actions, the court must give effect to the intention of the legislature and apply the law as it stands at the time of the judgment even though there is no express reference to pending actions. This principle was in fact stated in *Hutchinson* v. *Jauncey*.[7] In that appeal the question arose whether the application of the new Landlord and Tenant (Rent Control) Act, 1949 was excluded by reason that the plaint was issued by the landlord claiming possession against the defendant tenant before the Act came into force. Section 10 of the 1949 Act read:

"The three last foregoing sections shall apply whether the letting in question began before or after the commencement of the Act, but not so as to affect rent in respect of any period before the commencement thereof or anything done or omitted during any such period."

Evershed M.R. in his leading judgment at page 578 said:

"To quote from *Maxwell*, on the Interpretation of Statutes (9th ed.) p. 229: 'In general, when the law is altered during the pendency of an action, the rights of the parties were decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.' Two of the cases seem to indicate that there should be found express reference to causes of action pending."

In *re Joseph Suche & Co. Ltd.*[8] was referred to and Jessel M.R.'s general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them was disapproved. Evershed M.R. continued:

"I doubt whether the principle ought to be expressed in quite such precise language as Jessel M.R. used in *In re Joseph Suche & Co., Ltd.* In other words, it seems to me that, if the necessary intendment of the Act is to affect pending causes of action, then this court will give effect to the intention

of the legislature even though there is no express reference to pending actions."

In our view the express provisions of section 150 of the 1976 Act override section 30 of the Interpretation Act, 1967. The absence of the words "unless the contrary intention appears" or any other words of like effect in section 30 of our Interpretation Act is immaterial. Such words are in fact superfluous or *ex abundanti cautela* for it is always a matter of construction whether a contrary intention appears in any provision of a law. The Disciplinary Committee was therefore correct in proceeding under the 1976 Act.

The second question is what burden of proof did the Disciplinary Committee apply in arriving at its findings. Looking at the grounds given in its statement of findings, the Disciplinary Committee although it made very firm findings unfortunately did not say expressly what standard of proof it adopted in arriving at its decision.

First, what is the standard of proof required in such a proceeding? Very recently, this court in *Au Kong Weng* v. *The Bar Committee, State of Pahang*[9] dealt with the same question and accepted the standard set by *Bhandari's* case.[10] Lord Tucker in that case approved the required standard established by the Court of Appeal in that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for. The Court of Appeal also expressed the view that any body of professional men sitting in judgment on a colleague should not be content to condemn on a mere balance of probabilities.

The standard of proof required in a proceeding of this type is proof beyond reasonable doubt. In the judgment of this court in *Au Kong Weng's* case, the Chief Justice said:

"It is a question for the committee to decide, first, whether the facts alleged in the charge had been proved beyond reasonable doubt and secondly whether the appellant in relation to those facts, was guilty of such conduct. The absence in the Committee's determination of any mention of the standard of proof does not justify an inference that it had failed to have regard to it."

In *Au Kong Weng's* case it was also clearly held that there were no closed categories of professional misconduct.

In the Guide to the Professional Conduct of Solicitors issued by the Council of the Law Society in 1974 the following appears:

"One of the hallmarks of a developed profession is that it should lay down and maintain standards of professional conduct for its members based upon the best thinking of those members as to what constitutes proper conduct for a member of that profession."

We feel bound to reiterate here that the legal profession is an honourable profession whose members are expected to conduct themselves honourably. The appellants here were dealt with in a proceeding by virtue of a statute enacted to govern the conduct of members of their profession. Moreover, they were tried by their own peers. Members of the Disciplinary Committee were senior members of the profession who made firm findings of fact and they concluded that the appellants were guilty of misconduct in their practice as advocates and solicitors. The Chief Justice stated in *Au Kong Weng's* case that statutes relating to the legal profession now entrust the supervision of advocates and solicitors' conduct to a committee of the profession, for it knows and appreciates better than anyone else the standards which responsible legal opinion demands of its own profession.

In *United Africa Co., Ltd.* v. *Saka Owoade*[11] Lord Oaksey in his judgment referred to the case of *Lloyd* v. *Grace, Smith & Co.*[12] which established the principle that a master is liable for his servant's fraud perpetrated in the course of the master's business whether the fraud was committed for the master's benefit or not.

In *Colin Kenneth McCoan* v. *General Medical Council*[13] the Disciplinary Committee of the General Medical Council found proved against the appellant who was charged and held that on the facts alleged, he had been guilty of infamous conduct in a professional respect. His name had been ordered to be erased from the medical register. On his appeal it was contended that in all the circumstances his conduct, though reprehensible, was not infamous in a professional respect as defined in *Felix* v. *General Dental Council.*[14] It was held in that case that the finding of the Disciplinary Committee that on the facts the appellant was guilty of infamous conduct in a professional respect could not be challenged and that the Board should be very slow to interfere with the exercise by the Disciplinary Committee of its discretionary power to impose sentence of erasure. In the judgment of the Privy Council at page 1113 the following appears:

"Their Lordships are of opinion that Lord Parker C.J. may have gone too far in *Re a Solicitor*[15] when he said that the appellate court would never differ from sentence in cases of professional misconduct, but their Lordships agree with Lord Goddard C.J. in *In re a Solicitor*[16] when he said that it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct.

No general test can be laid down, for each case must depend entirely on its own particular circumstances."

We agree with the Disciplinary Committee that the facts of this case are simple and straightforward. We also feel that the findings of the Disciplinary Committee could not have been otherwise. In the circumstances of this case we are of the view that the Disciplinary Committee adopted the right approach and we also find no grounds whatsoever to assume that the Disciplinary Committee applied a lower standard of proof than that required for a proceeding of this nature. We also have no grounds to interfere with the sentences imposed. The appeals are therefore dismissed.

Appeals dismissed.

Solicitors: *Sault & Co.; Ranjit, Thomas & Kula; Sothi & Ang.*